

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 882 (M/S) of 2005

Kamla Devi @ Mala Devi, W/o Late Sri Preetam Singh,
R/o Neena Cottage, Clementown, Dehradun.

.....Petitioner

Versus

1. Civil Judge, (Senior Division), Dehradun.
2. Smt. Harminder Kumari W/o Late Brig. Harbhajan Singh, R/o 198, Bishop Rocky Street, Faizabad Road, Lucknow, District Lucknow.
3. Smt. Jagmit Kaur W/o Sri Pramjit Singh, R/o Village Lahor Majra, District Sangrur, Punjab.
4. Smt. Avninder Kaur W/o Sri Bhupinder Singh R/o Avas Vikas Colony, Rudarpur, District Udham Singh Nagar.

.....Respondents

Sri Alok Singh Senior, Advocate assisted by Dharmender Barthwal, Lalit Tewari, and Bhupender Singh, for the petitioner

Standing Counsel for the respondent no. 1

Dated 15.7.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari, quashing the order dated 09.05.2006 annexure No. 1 to the writ petition, and also prayed for a writ of mandamus directing the respondents not to dispossess the petitioner in execution case No. 24 of 2001, till the disposal of the petitioner's objection in Misc. Case No. 75 of 2005.

Briefly stated, according to the petitioner original suit No. 36 of 2000 Smt. Jagmit Kaur and another V. Smt. Harminder Kumari was filed before the Civil Judge (Senior Division), Dehradun for specific performance directing the respondents/defendants to execute the sale-deed in favour of the plaintiff in terms of the contract between tow parties dated 06.07.1993. The suit was decreed on 17.4.2001. Being aggrieved by the said judgment dated 17.4.2001, Smt. Harminder Kumari has preferred a civil appeal No. 48 of 2001. before the District Judge, which was dismissed on 25.1.2003. A second appeal was preferred where the compromise was recorded and the appeal preferred by the defendant was not pressed, and the dispute was settled out side the Court.

The petitioner has submitted that he plaintiff can get only symbolical possession and no actual possession can be delivered in view of the fact that he is a tenant in the property and can be evicted only in accordance with law. A counter-affidavit has been filed by the respondents stating therein that the objection under section 47 of Code of Civil Procedure is not maintainable and further no objection under Order 21 Rules 97 of C.P.C. has been filed.

In view of the aforesaid, parties have agreed that let the writ petition be disposed of with this direction that in case the petitioner prefers his objection under Order 21 Rule 97 of C.P.C., the same may be disposed of in accordance with law. However,

till the disposal of the objections, for a period of two months parties are directed to maintain status-quo. However, this stay order shall not prejudice the presiding officer while deciding the objection under Order 21 Rule 97 of C.P.C.

Writ Petition is disposed of. No order as to costs.

Dated: 15.7.2006

Rajesh Tandon, J.